

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

**JACKSON COUNTY, MISSOURI**  
**Plaintiff,**

**Case No. 1816-CV17045**  
**Division 9**

**v.**

**MIKE HENDRICKS**  
**Defendant.**

**AMENDED JUDGMENT**

After review of the stipulated facts and the parties' briefing, the Court rules as follows.

**Background**

On June 29, 2018, Jackson County, Missouri ("Jackson County") filed a Petition for Declaratory Judgment against Mike Hendricks ("Hendricks") requesting the Court to declare material gathered by a grand jury is confidential, closed, and not subject to disclosure under the Missouri Sunshine Law. On August 21, 2018, Hendricks filed an Answer, Affirmative Defenses, and Counterclaim alleging, among other things, the Sunshine Law request had been made by him to the Jackson County, Missouri Prosecuting Attorney's Office ("Prosecutor") and Jackson County had no standing to pursue this action. On September 11, 2018, the Prosecutor filed a Motion to Intervene. On September 19, 2018, Jackson County, represented by the Jackson County Counselor's Office ("County Counselor") filed an opposition to the Motion to Intervene and a Motion to Disqualify and Strike the Prosecutor's pleadings. On November 16, 2018, the Court granted the Prosecutor's Motion to Intervene and denied Jackson County's Motion to Strike. On November 21, 2018, the parties filed a Joint Stipulation of Facts noting all relevant facts are not in dispute. The parties have fully briefed the issues pending before the Court.

## **Decision**

The Prosecutor and Hendricks first argue Jackson County has no standing and thus, its request for declaratory judgment must be dismissed. “[I]f a party lacks standing sufficient to maintain an action, the court necessarily does not have jurisdiction over the claims presented. Therefore, a claim that a party lacks standing has generally been treated as a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 55.27(a)(1).” *Borges v. Mo. Pub. Entity Risk Mgmt. Fund (MOPERM)*, 358 S.W.3d 177, 183 (Mo. Ct. App. 2012) (internal citations and quotations omitted). Courts must determine if a party has standing “prior to addressing the substantive issues of the case.” *Howard v. Joplin Stone Co.*, 446 S.W.3d 262, 263 (Mo. Ct. App. 2014) (quoting *CACH, LLC v. Askew*, 358 S.W.3d 58, 61 (Mo. banc 2012)). If a party lacks standing, the court must dismiss the case because it does not have jurisdiction over the subject matter. *Healthcare Servs. of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 612 (Mo. banc 2006). The party seeking relief bears the burden of establishing standing to seek the relief requested. *Howard*, 446 S.W.3d at 263.

“Standing, at its most basic level, simply means that the party or parties seeking relief must have some stake in the litigation.” *Lebeau v. Comm’rs of Franklin Cty.*, 422 S.W.3d 284, 288 (Mo. banc 2014) (citation omitted). “In the context of a declaratory judgment action, the plaintiff must have a legally protectable interest at stake in the outcome of the litigation.” *Id.* (citation omitted). “A legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff’s interest is conferred by statute.” *Id.* (citation and internal quotations omitted).

A review of Jackson County’s Petition reveals it has not alleged any legally protectable interest at stake in the outcome of the litigation. The Petition merely expressed concern about grand jury secrecy, generally, and suggested Hendricks could make his records request to Jackson County rather than the Prosecutor. In its briefing, Jackson County did not argue it—or

any specific persons or departments—were directly and adversely affected by Hendricks’ Sunshine Law request. Instead, it maintained the grand jury was a “judicial function”<sup>1</sup> and that it had a general interest in whether the records were open under the Sunshine Law. A general interest without expression of actual injury is insufficient. *Shannon v. Hines*, 21 S.W.3d 839, 840 (Mo. Ct. App. 1999).

The Sunshine Law statutory scheme and the Jackson County Code buttress the Court’s finding in this instance. The documents at issue were subpoenaed by the grand jury and are currently in the possession of the Prosecutor. There is no dispute the Prosecutor is a “public governmental body” under the Sunshine Law and that she is the “Custodian[] of [her] own Records.” Mo. Stat. Ann. § 610.010(4)(a); Jackson County, Mo., Code §§ 1203.02, 1201(a) (“Custodian of Records” means “person with immediate charge and control of public records for a designated governmental body”). Thus, it is her duty to “respond to all requests for access to or copies of a public Record.” Code at § 1204;<sup>2</sup> *see also* Code at § 1202 (each division, department, agency or office shall comply with Sunshine Law); *State ex rel. Daly v. Info. Tech. Servs. Agency*, 417 S.W.3d 804, 809 (Mo. Ct. App. 2013). “[T]he custodian of records for the agency whose records are sought has the responsibility of the dissemination or non-dissemination of those records.” *State ex rel. Daly*, 417 S.W.3d at 809. Although the documents at issue were

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<sup>1</sup> An interesting question is raised—whose grand jury is it? There is no clear answer. Courts have recognized grand juries “are for all practical purposes an investigative and prosecutorial arm of the executive branch of government . . .” and that they are an arm of the court. *Compare In re Grand Jury Proceedings*, 486 F.2d 85, 90 (3d Cir. 1973), with *State ex rel. Burke v. Scott*, 262 S.W.2d 614, 618 (Mo. 1953) (in context of subpoenas, grand jury arm of the court and a body with functions of a judicial nature). This issue, however, is not before the Court as the grand jury documents are in the Prosecutor’s custody, the Circuit Court has laid no claim to them, and the Circuit Court has made no effort to prevent their disclosure. Further, either a determination that the grand jury is an “arm of the court” or that it is an “arm of the prosecutor” does nothing to establish Jackson County’s standing.

<sup>2</sup> The Jackson County Code requires the Prosecutor to immediately submit public record requests to the “County Counselor for his review and assistance in compliance.” Code at § 1204. Whether this Code provision was violated is not before this Court but in any case, it does not impact the Court’s finding regarding standing.

subpoenaed from various Jackson County departments by the grand jury, all the documents were transferred to the Prosecutor and therefore, it is the Prosecutor who must respond to the Sunshine Law request. *Id.* at 810 (agency that transmitted record surrendered custody of it and receiving entity retained it). The statutes relied upon by Jackson County do not confer standing in this instance.<sup>3</sup>

Because Jackson County has not met its burden of establishing standing to seek the relief requested, the Court does not have jurisdiction over the claims presented and Jackson County's case must be dismissed.

For the foregoing reasons, it is hereby

**ORDERED** Jackson County's Petition for Declaratory Judgment is dismissed with prejudice.

**IT IS FURTHER ORDERED** judgment in the amount of \$13,472.50 is entered for Defendant and against Plaintiff for attorney's fees.

**IT IS SO ORDERED.**

February 01, 2019

**DATE**



**JOEL P FAHNESTOCK, JUDGE**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing was hand delivered/faxed/emailed/mailed and/or sent through the eFiling system to the following on 1st day of February, 2019:

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<sup>3</sup> Further, the Sunshine Law allows any "aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney" to seek judicial enforcement of Sunshine Law violations. Mo. Rev. Stat. § 610.027.1. Jackson County has not shown it falls within the enforcement class as provided for in the statute.

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